

**A RESOLUTION
BY THE COMMUNITY DEVELOPMENT/
HUMAN RESOURCES COMMITTEE**

09-R-

A RESOLUTION AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY, TO EXECUTE AMENDMENT NUMBER EIGHT TO AN INDENTURE OF LEASE BETWEEN THE CITY OF ATLANTA AND THE ATLANTA BOTANICAL GARDEN, INC. FOR THE PURPOSE OF INCREASING THE PARKING FACILITY FINANCING WITHOUT CHANGING THE PARKING RATES ESTABLISHED IN COUNCIL APPROVED AMENDMENT NUMBER 6; AND FOR OTHER PURPOSES.

WHEREAS, on March 28, 1980, the City of Atlanta ("City") and the Atlanta Botanical Garden, Incorporated ("ABG") entered into an Indenture of Lease (the original lease, as amended by the previous seven amendments, "Lease") for a period not to exceed fifty years; and

WHEREAS, the terms of the Lease provide for the establishment, operation, maintenance, and improvement of a botanical garden located within Piedmont Park (the "Garden"); and

WHEREAS, ABG has completed construction of a Parking Facility ("Parking Facility") located on the "Leased Premises" as defined in the Lease, at no cost to the City, pursuant to Lease Amendment Number 6 dated October 26, 2006 ("Amendment 6"); and

WHEREAS, ABG has complete responsibility for the Parking Facility, including without limitation financing its construction, and operating and maintaining it; and

WHEREAS, ABG requires additional resources to complete its financing of the Parking Facility construction; and

WHEREAS, ABG has determined that it can satisfy its construction financing needs by increasing its financing from Four Million Dollars to Seven Million Dollars (\$7,000,000). This financing increase would not have any financial impact on the City; and

WHEREAS, the City will have no financial liability from the financing increase because the City is not required to and will not guarantee the bonds; and

WHEREAS, Amendment 6 establishes a parking rate structure/parking fees ("Parking Fees") for the Parking Facility. ABG will not alter the Parking Fees for at least two years

after the execution of the Lease amendment proposed herein, despite receiving additional financing; and

WHEREAS, in order to increase financing, ABG must receive City approval through an amendment to the Lease ("Amendment Eight"). Because the proposed Amendment Eight has no impact on the City and ABG has agreed not to change the Parking Fees for at least two years, the City has no objection to the Lease amendment.

NOW, THEREFORE, BE IT RESLOVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA AS FOLLOWS:

SECTION ONE: The Mayor is hereby authorized to execute, on behalf of the City, Amendment Eight to the Lease, whereby said Amendment shall look substantially like that amendment attached hereto as Exhibit 1. The purpose of Amendment Eight is to increase the Parking Facility Financing limit set forth in Paragraph 2.5 of Amendment No. 6 from Four Million and No/100 Dollars (\$4,000,000) to Seven Million and No/100 Dollars (\$7,000,000). The other terms and conditions of the Lease shall remain unchanged.

SECTION TWO: ABG shall not raise the Parking Fees for at least two years after the execution of Amendment Eight to the Lease.

SECTION THREE: The City Attorney or his/her designee is hereby directed to prepare an Amendment Eight to the Lease for execution by the Mayor, to be approved by the City Attorney or his/her designee as to form.

SECTION FOUR: Amendment Eight to the Lease shall not become binding upon either the City or ABG, and the City shall incur neither obligation nor liability until the Amendment has been signed by the Mayor, executed by the City Clerk, and delivered to ABG.

SECTION FIVE: All resolutions in conflict herewith are hereby waived for purposes of this resolution only, and only to the extent of the conflict.

EXHIBIT 1

LEASE AMENDMENT NO. 8

THIS LEASE AMENDMENT NO. 8 ("Amendment") is made and entered into this ____ day of _____, 2009 by and between the City of Atlanta, a municipal corporation of the State of Georgia ("Lessor") and The Atlanta Botanical Garden, Inc., a non-profit corporation created pursuant to the laws of the State of Georgia ("Lessee").

WITNESSETH

WHEREAS, Lessor and Lessee (individually, a "Party" and collectively, the "Parties") entered into that certain Indenture of Lease dated March 31, 1980 (the "Original Lease") for a period of fifty (50) years relating to the lease of certain public property, commonly known as the Atlanta Botanical Garden ("Garden"), which is located inside of a Lessor owned and operated park known as Piedmont Park (the "Park"). The Original Lease has been amended by: Lease Amendment No. 1 dated April 27, 1988; Lease Amendment No. 2 dated July 27, 1989; Lease Amendment No. 3 dated January 24, 1990; Lease Amendment No. 4 dated May 3, 1990; Lease Amendment No. 5 dated August 1, 2000; Lease Amendment No. 6 dated October 26, 2006 ("Amendment No. 6"); and Lease Amendment No. 7 dated _____, 2009 (the Original Lease, as amended by the foregoing seven amendments, the "Lease"); and

WHEREAS, Lessee has completed construction of the Parking Facility (as defined in Amendment No. 6); and desires to modify the Lease in order to increase the limit on Parking Facility Financing (as defined in Amendment No. 6) as more particularly described herein below.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual covenants and agreements contained in this Amendment, the Parties do hereby agree as follows:

Section 1. Parking Facility Financing. Paragraph 2.5 of Amendment No. 6 is hereby deleted in its entirety and replaced in full with the following provision.

"2.5 Parking Facility Financing. Lessee shall have the right, exercisable in its sole discretion, to borrow funds to pay the costs and expenses of constructing the Project (the "Construction Loan") provided that the portion of such Construction Loan payable as a Parking Facility Operating Expense shall be no more than Seven Million and No/100 Dollars (\$7,000,000) having not less than a twenty (20) year amortization period (the "Allocable Financing"). Debt service during the construction of

the Project shall be capitalized and deemed a cost of construction of the Project. Debt service payments on such Allocable Financing incurred after the opening of the Parking Facility shall be considered a Parking Facility Operating Expense until such debt is fully retired. Loans not to exceed Seven Million and No/100 Dollars (\$7,000,000) in the aggregate at any one time (including the outstanding balance of the Allocable Financing) may be obtained by Lessee from time to time to refinance the outstanding balance of the Allocable Financing or to obtain funds to pay any Parking Facility Operating Expenses ("Additional Allocable Financing") that can be considered capital expenditures under generally accepted accounting procedures, provided the repayment obligations shall provide for not less than the lesser of (i) a twenty (20) year amortization period or (ii) an amortization period equal to the remaining term of the Lease. The Allocable Financing and Additional Allocable Financing contemplated by this Section 2.5 shall be referred to in this Agreement as "Parking Facility Financing." Debt service on Parking Facility Financing incurred after the opening of the Parking Facility shall be considered a Parking Facility Operating Expense."

Section 2. MISCELLANEOUS PROVISIONS.

2.1 Capitalized Terms. All capitalized terms used herein but not otherwise defined, shall have the same meaning as set forth in the Lease.

2.2 Ratification. Except as modified hereby, the terms and conditions of the Lease remain in full force and effect, the same being ratified and confirmed hereby. To the extent the terms hereof are inconsistent with the terms of the Lease, the terms hereof shall control.

2.3 Lessor Execution Required. This Amendment shall not become binding on Lessor and Lessor shall incur no liability upon the same until this Amendment has been fully executed and delivered to the Lessee.

[Remainder of Page Intentionally Left Blank]

In Witness Whereof, the Parties have caused this Amendment to be executed by their respective duly authorized officials or representatives, as of the day and the year first written above.

ATTEST:

CITY OF ATLANTA:

MUNICIPAL CLERK (SEAL)

SHIRLEY FRANKLIN, MAYOR

RECOMMENDED:

Commissioner,
Dept. of Parks, Recreation and
Cultural Affairs

APPROVED:

Commissioner,
Dept. of Procurement

APPROVED AS TO FORM:

City Attorney

ATTEST:

THE ATLANTA BOTANICAL GARDEN, INC.,
a Georgia non-profit corporation

CORPORATE SECRETARY (SEAL)

By: _____

Name: _____

Title: _____

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview: Community Development/ Human Resources Committee

Caption: A RESOLUTION AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY, TO EXECUTE AMENDMENT NUMBER EIGHT TO AN INDENTURE OF LEASE BETWEEN THE CITY OF ATLANTA AND THE ATLANTA BOTANICAL GARDEN, INC. FOR THE PURPOSE OF INCREASING THE PARKING FACILITY FINANCING WITHOUT CHANGING THE PARKING RATES ESTABLISHED IN COUNCIL APPROVED AMENDMENT NUMBER 6; AND FOR OTHER PURPOSES.

Council Meeting Date: October 19, 2009

Requesting Dept.: Department of Parks, Recreation and Cultural Affairs

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).

The purpose of this legislation is to execute Amendment #8 to an Indenture of Lease between the City of Atlanta and the Atlanta Botanical Garden, Inc for the purpose of increasing the parking facility financing without changing the parking rates established by the Council-approved Amendment #6.

2. Please provide background information regarding this legislation.

3. If Applicable/Known:

(a) **Contract Type (e.g. Professional Services, Construction Agreement, etc):**

(b) **Source Selection:**

(c) **Bids/Proposals Due:**

(d) **Invitations Issued:**

(e) Number of Bids:

(f) Proposals Received:

(g) Bidders/Proponents:

(h) Term of Contract:

4. Fund Account Center:

5. Source of Funds:

6. Fiscal Impact:

7. Method of Cost Recovery:

This Legislative Request Form Was Prepared By:

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: GREG PRIDGEON

Dept.'s Legislative Liaison: Debra F. Harris

Contact Number: _____

Originating Department: Department of Parks, Recreation and Cultural Affairs

Committee(s) of Purview: Community Development/ Human Resources Committee

Chief of Staff Deadline: September 29, 2009

Anticipated Committee Meeting Date(s): October 13, 2009

Anticipated Full Council Date: October 19, 2009

Legislative Counsel's Signature: Robin Shahar

Commissioner Signature: [Signature]

Chief Procurement Officer Signature: _____

CAPTION

A RESOLUTION AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY, TO EXECUTE AMENDMENT NUMBER EIGHT TO AN INDENTURE OF LEASE BETWEEN THE CITY OF ATLANTA AND THE ATLANTA BOTANICAL GARDEN, INC. FOR THE PURPOSE OF INCREASING THE PARKING FACILITY FINANCING WITHOUT CHANGING THE PARKING RATES ESTABLISHED IN COUNCIL APPROVED AMENDMENT NUMBER 6; AND FOR OTHER PURPOSES.

Mayor's Staff Only

Received by CPO: _____

(date)

Received by LC from CPO: _____

(date)

Received by Mayor's Office: [Signature]

(date)

Reviewed by: [Signature]

(date)

Submitted to Council: _____